



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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B-178078

May 18, 1973

The Honorable James C. Fletcher
Administrator, National Aeronautics
and Space Administration

Dear Dr. Fletcher:

Reference is made to a letter (your reference KDP-3) dated February 21, 1973, with enclosures, from the Director of Procurement, submitting a report on the request of Mitchell Camera Company for reformation of contract NAS3-16705 in the amount of \$1,430 based on a mistake alleged after award of the contract by NASA's Lewis Research Center.

This procurement was negotiated on a sole-source basis and provided for the repair and improvement of two Monitor 16mm cameras. The statement of work for each camera provided for the installation of "A.C./D.C. motor and associated controls" and "isolated dual timing lights." The cameras were forwarded to the manufacturer, Mitchell Camera Co., together with a copy of the solicitation in order that Mitchell might inspect them to determine the parts and labor required to accomplish the work. Mitchell submitted its proposal on June 15, 1972, in the amount of \$1,684.40 (Parts \$914.40, Labor \$770.00) for Item No. 1 and \$1,506.55 (Parts \$758.55, Labor \$748.00) for Item No. 2. On June 26 the contracting officer by telephone requested a detailed breakdown of the cost of parts and labor. All parts prices were verified against the Mitchell price lists in the possession of the Plan and Source Office; the reasonableness of the labor charges were verified by the Head of the Motion Picture Section. On this basis, the contracting officer found the total price to be justified, and Mitchell was awarded the contract.

The contractor submitted the cameras on August 15 and August 23, but both were rejected on September 1 because they did not have the A.C./D.C. motor and controls and the timing lights installed as required by the contract. Upon rejection, Mitchell alleged that they had mistakenly omitted the cost of these items in making their original estimate, and they confirmed their allegation by letters dated September 14 and November 8, 1972. Mitchell subsequently completed the repairs on the cameras.

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The contracting officer recommends that the claim of mistake after award be allowed in the amount of \$1,430.00. The contracting officer's recommendation is based on his judgment that the evidence submitted by Mitchell demonstrates that a bona fide mistake was made. He further states that he did not suspect a mistake either from an examination of the total price or the price breakdown.

Assuming that the evidence presented may be accepted as establishing a bona fide error as alleged, the controlling question when a mistake is alleged after award is whether the contracting officer had actual or constructive notice of the possibility of error.

On the record before us, we agree with the Director of Procurement's view that the contracting officer was not on constructive notice of the possibility of error. Since this was a sole-source procurement, there was no basis for a price comparison. Moreover, since the procurement activity had not previously contracted for camera repair work, no prior cost history was available. The Government's estimate of \$4,000 was for budgetary purposes only, and it was not viewed as an accurate reflection of the cost to the Government for the work.

For the foregoing reasons, and since we agree with the Director of Procurement's position that the contracting officer's cost analysis was under the circumstances consistent with NASA Procurement Regulation 3.807-2, the request for relief is denied. See B-169676, July 28, 1970, copy enclosed.

Sincerely yours,

PAUL G. DEMBLING

For the Comptroller General
of the United States